Supreme Court, U. S.
FILED
MAR 9 1977
MICHAEL RODAK, JR., CLERK

In the

SUPREME COURT OF THE UNITED STATES

No. 76-1271

THOMAS WARNER HOOPES,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

THOMAS W. HOOPES
2559 Keddington Lane
Salt Lake City, Utah 84117
Petitioner Pro se

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U.S. Court of Appeals for Tenth Circuit
Decision excerpt A-2

In the

SUPREME COURT OF THE UNITED STATES

No. _____

THOMAS WARNER HOOPES,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the Decision of the U. S. Court of Appeals for the Tenth Circuit filed December 3, 1976.

DECISION BELOW

On December 3, 1976, the U.S.Court of Appeals for the Tenth Circuit affirmed the lower verdict. No decis-

ion was rendered upon the denial of Petitioner's Petition for Rehearing.

JURISDICTION

The Decision of the U. S. Court of Appeals for the Tenth Circuit was filed December 3, 1976. The Judgment of Wilful Failure To File (7203) rendered in the District Court was affirmed. A timely Petition for Rehearing was denied on February 3 1977; A Motion for Stay of Mandate Pending Application to the Supreme Court for a Writ of Certiorari was filed on February 8 1977. Also, a Notice of Intention to Petition to U.S.Supreme Court for a Writ of Certiorari was filed with this Court. This Petition for Certiorari was filed within the statutory period. This Court has jurisdiction under Title 28, U.S.C. Sec. 1254 (1). Petitioner asserted below and asserts at this point the deprivation of rights secured by the Constitution of the United States, and Garner v. United States U.S. Sup. Ct. No. 74-100, Off. Rpts. Sup. Ct. Vol. 424 U.S. part 3, p. 600-873, 950-979.

QUESTIONS PRESENTED

1. In view of the Defendant having meticulously followed U.S. Supreme Court instructions regarding testing of specific points required in the filling out and filing of Federal Income Tax Forms (1040),

   A. Can the United States of America, U. S.District Court properly charge and him of Wilful Failure to File, U.S.C., Title 26, Section 7203,for the years 1971 and 1972?

   B. Can the District Court IGNORE U. S. Supreme Court rulings and long-settled guidelines in Garner, Sullivan, Kastigar, et al?

   C. Can the Appellate Court IGNORE U.S.Supreme Court rulings and guidelines in Garner?

   D. Can the Internal Revenue Service, its officers and agents, continually IGNORE U.S.Supreme Court rulings and guidelines in Garner?

2. Can Trial Court, himself a party to suits in which the Defendant is an adversary, who demonstrates bias and prejudice against Defendant, objectively rule in the instant case?

3. Can the Court properly convict the Defendant, when his counsel has ineptly, negligently and, apparently systematically disregarded his client's instructions and proper defense?

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONSTITUTION, 5th Amendment:

. . . . . nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF CASE

Thomas Warner Hoopes, Defendant below, was charged by misdemeanor information in the Central Division of the United States District Court for the District of Utah, the Honorable Judge Willis W. Ritter, presiding, with two counts of Wilful Failure to File Income Tax Returns, contrary to the provisions of Section 7203, Title 26, U.S.C., for the years 1971 and 1972. Following his arraignment, Defendant, on the 13th day of January, 1976, acting Pro se, filed his Motion for disqualification of the Honorable Willis W. Ritter, together with supporting Affidavit and Brief. On the 14th day of January, 1976, the case came on regularly for jury trial, immediately prior to which the Defendant's Motion was denied by the Court. Thereafter, on the 15th day of January, 1976, the jury returned its verdict of guilty to both counts. Following the jury verdict, Judge Ritter adjudged Mr. Hoopes guilty as charged in Counts One and Two of the information, and on the 9th day of March, 1976, the Court ordered Hoopes committed to a term of imprisonment for a period of one year on each count, said sentence to run consecutively, for a total of two years, and in addition thereto, that Hoopes be fined in the sum of Ten Thousand Dollars as to each of the two counts, for a total fine in the sum of Twenty Thousand Dollars. Thereupon, Appellant filed his Notice of Appeal to the Tenth Circuit Court on the 15th day of March, 1976.

STATEMENT OF FACTS

Defendant-Appellant, Thomas Warner Hoopes, married, the father of eight, has engaged in the practice of dentistry in Salt Lake City, Utah, for the past fourteen years. Utilizing the "bank deposits method", it was established by the government's witnesses, that for the years 1971 and 1972, Hoopes received as income from his dent-

al practice an approximate "gross income", absent appropriate deductions, $44,324.66 and $41,503.38 respectively (T.72). The government's evidence further demonstrated that for the preceeding years of 1968, 1969, and 1970, Hoopes had duly and regularly filed federal income tax returns and had paid the taxes thereon in regular form. For the years 1971 and 1972, however, Hoopes filed forms 1040 containing his name, address, and other pertinent data, but withholding income information or figures which would be used in ascertaining the tax, invoking the Fifth Amendment in those specific instances. (T.8,11). Subsequently, The Defendant filed with the Internal Revenue Service on forms 1040, "amended returns" annexing thereto some 490 pages of documents and court decisions (Sullivan, Garner, et al) supporting claims made by the Defendant against revealing pertinent financial data (T.96). Notwithstanding, the government introduced evidence to the effect that Defendant during the years in issue regularly withheld taxes on wages paid to to his employees and furnished themwith form W-2 withholding statements. Further, when interviewed by agents of the Intelligence Division of the Internal Revenue Service during July of 1972, Hoopes indicated that he had made a study of the the Internal Revenue Code and the U.S. Constitution, and that by his invoking the Fifth Amendment was exercising a constitutionally protected right. (T.57,58,59).

Following the government's case-in-chief; the Defendant called several witnesses who testified as to his general reputation in the community for good character, and further, Hoopes took the stand and acknowledged his responsibility to make payment of all taxes and obey the law (T.85), but indicated that he was endeavoring to assert his right (Fifth Amendment) and privilege in a good faith manner, and have it ruled upon as to its validity (T.98). Hoopes indicated in his testimony,

that prior ot taking such action and following a complete disclosure of his plans that he had consulted with a number of persons whom he believed to be attorneys and learned in the law and holding themselves out as such, and that following such consultations, came to the belief that such action was legitimate, and that a tax return filed in such form would require the Internal Revenue Service to seek a judicial review and determination of the validity of the Fifth Amendment invocation.

The Internal Revenue Service, however, has totally ignored the Defendant's position, and assertion of his Fifth Amendment privilege, and has instead mistakenly brought criminal charges. No judicial or administrative hearing has ever been held to evaluate the validity of the Defendant's claim.

The Trial Court has repeatedly demonstrated an arbitrary, vindictive and prejudicial stance toward the Defendant before, during and subsequent to the trial.

David Knowlton, counsel for the Defendant, acted negligently, and systematically failed to obey Hoopes 's instructions and present the Defendant's actual defense, and was therefore, on the 11th day of December , 1976 released from further obligation to act as counsel to the Defendant.

Knowlton, having been "fired", then on his own, and absolutely contrary to Hoopes's instructions, filed a Motion for Reduction of Sentence. Hoopes, when notified of the scheduled hearing, ordered Knowlton (December 15, 1976) to immediately withdraw said motion. Knowlton failed to do so until eleven days after the erroneous and untimely Hearing was held! Hoopes had been explicitly assured that the Petition would be withdrawn by the personal appearance of the attorney prior to the scheduled Hearing on the 17th day of December, 1976.

Judge Ritter used the "non-Hearing" as an excuse to strike out at Hoopes once again! The transcript reads as follows:

> "MR. SNOW: Apparently Defendant Hoopes is not present but this was his motion to have the sentence reduced.
>
> THE COURT: Well, the motion is denied. It wouldn't make any difference if he had the whole bar representing him on that. I am not going to reduce that sentence." (T.1,2).

The Defendant, without counsel, filed a timely affidavit and Petition for Rehearing on the 16th day of December, 1976. Succinct arguments, revolving primarily around Sullivan and Garner, were presented to insure the inclusion in the record. The Petition was denied, February 3, 1977, without acknowledgment of Defendant's rights and Garner, Sullivan, or anyone else!

REASONS FOR GRANTING THE WRIT

POINT I

THE COURT BELOW IGNORED THE FIFTH AMENDMENT, SULLIVAN, GARNER AND HAS THEREBY DENIED TO PETITIONER ALL OF HIS RIGHTS THEREUNDER.

A, B, C, and D.

Since the Defendant timely filed his tax forms (1040) each year (T.6,8,10–12), the pivotal point in this case is the Defendant's intent (i.e. Whether or not there was "wilfulness"). The Defendant, believing that some of the questions called for answers that could be used in criminal charges against him, made specific objections to those specific questions. The forms were filled out in a strict compliance with long standing, and recently reiterated, U.S.Supreme Court rulings! In Garner v. United States, U.S.Supreme Court, No.74-100, Argued Nov.4,1975--Decided Mar. 23, 1976, Slip opinion. Also, Official Reports of Supreme Court, Vol. 424 U.S.,part 3, p. 600-873; 950-979. In their unanimous opinion the Supreme Court reaffirms the following cases: United States v.Sullivan, 274 U.S. 259 (1927), Kastigar v. United States, 406 U.S. 441 (1972), Boyd v. United States, [116 U.S. 616 (1886)], United States v. Kordel, 397 U.S. 1, 7-10 (1970), Miranda v. Arizona, 384 U.S. 436 (1966), Albertson v. SACB, 382 U.S. 70, 78-79 (1965), Vajtauer v. Commissioner of Immigration, 273 U.S., at 113 United States v. Murdock (Murdock I), 284 U.S. 141 (1931) United States v. Murdock (Murdock II), 290 U.S. 389 (1933), Tehan v. Shott,382 U.S. 406,415 (1966), Maness v. Meyers,419 U.S., 449, 460-461, 466 (1975).

The manner in which Defendant filed was absolutely consistent with U.S. v. Sullivan and was intended to assert Fifth Amendment privilege against specific disclosures sought on the returns. Defendant felt some of the questions could lead to criminal charges, and therefore was faced with the decision to either assert lawful privilege at the prescribed time, or waive it forever. In retrospect the claim of privilege can be outlined as follows:

1) Specific objections were made to specific questions as per Sullivan, supra.

2) A claim of "Fifth Amendment" privilege was made on each specific objection.

3) Defendant's desire to test specific questions was never passes upon by any judicial or administrative tribunal! This oversight is in direct contempt of the Supreme Court's rulings in Garner (Reaffirming Marchetti and Grosso):

> "As we have noted, the privilege is an exception to the general principle that the Government has the right to everyone's testimony. A corollary to that principle is that the claim of privilege ordinarily must be presented to a 'tribunal' for evaluation at the time disclosures are initially sought."

Further in Garner:

> "If the latter claims the protection of the Fifth Amendment, he receives a judicial ruling at that time on the validity of his claim, and he has an opportunity to reconsider it before being held in contempt for refusal to answer." Cf. Maness v. Meyers, 419 U.S., at 460-461. (Emphasis supplied).

Again in Garner, dealing with the good-faith assertion of the privilege:

> "It would be quite another to deny a good-faith defense to someone like petitioner, who may be denied a ruling on the validity of his claim of privilege until his criminal prosecution, when it is too late to reconsider. If, contrary to the undisputed fact, a taxpayer had no assurance of either a preliminary ruling or a defense of good-faith assertion of the privilege, he could claim the privilege only at the risk that an erroneous assessment of the law of self-incrimination would subject him to criminal liability. In that event I would consider the taxpayer to have been denied the free choice to claim the privilege, and would view any incriminating disclosures on his tax return as "compelled" within the meaning of the Fifth Amendment. Only because a good-faith erroneous claim of privilege entitles a taxpayer to acquittal under 7203 can I conclude that petitioner's disclosures are admissible against him. (Emphasis supplied). Id. at 3 (Con.)

The Defendant was a "witness" on the tax return; a witness must object or lose the privilege! Garner, supra, clearly points out:

> "The term "witness" is used herein to identify one who, at the time disclosures are sought from him, is not a defendant in a criminal proceeding. The more frequent situations in which a witness' disclosures are compelled, subject to Fifth Amendment rights, include testimony before a grand jury, in a civil or criminal case or proceeding, or before a legislative or administrative body possessing subpoena power. Id. at 5 (footnote). (Emphasis supplied).

Again in Garner, it is indicated how narrow and limited an appropriate time for asserting the privilege actually is:

> "The Court has held that an individual under compulsion to make disclosures as a witness who revealed information instead of claiming the privilege lost the benefit of the privilege. Id. at 6. (Emphasis supplied)

Also:

> "The Court also has held, analogously, that a witness loses the privilege by failing to claim it promptly even though the information being sought remains undisclosed when the privilege is claimed. Id. at 5 (Emphasis supplied)

Strengthening the application of the "privilege", Garner reaffirms Monia as follows:

> "If, therefore, he desires the protection of the privilege, he must claim it or he will not be considered to have been 'compelled' within the meaning of the Amendment." United States v. Monia, supra, at 427 (Footnote omitted). Id at 7 (Emphasis supplied).

Again in Garner:

> "Unless a witness objects a government ordinarily may assume that its compulsory processes are not eliciting testimony that he deems to be incriminating. . . the burden approprately lies with him to make a timely assertion of the privilege. In addition, the rule that a witness must claim the privilege is consistent with the the fundamental purpose of the Fifth Amendment--the preservation of an adversary system of criminal justice. Id. at 7, 8. (Emphasis supplied).

Only the "witness" knows if a disclosure may incriminate him:

> "Only the witness knows whether the apparently innocent disclosure sought may incriminate him, and the burden appropriately lies with him to make a timely assertion of the privilege. Id. at 8 (Emphasis supplied).

The filer of an income tax return is a "witness":

> "The information revealed in the preparation and filing of an income tax return is, for purposes of Fifth Amendment analysis, the testimony of a "witness", as that term is used herein. Id. at 8. (Emphasis supplied).

The 7203 "Wilful Failure To File" charge is absolutely erroneous! Conviction cannot be based on a valid exercise of the Fifth Amendment privilege. A Defendant's right against self incrimination entitles him to remain silent unless he chooses to speak in the unfettered exercise of his own free will and to suffer no penalty for such silence. Brooks v. Tennessee, 406 U.S. 605., Mallory v. Hogan, 378 U.S. 1. Garner unequivocally states the thrust of the Defendant's position--an argument the I.R.S. cannot bring itself to address:

> "A 7203 conviction cannot be based on a valid exercise of the privilege. This is implicit in the dictum of United States v. Sullivan, supra, that the privilege may be claimed on a return. Id. at 14. (Emphasis supplied).

Firming that stand, Garner goes on:

> "The Fifth Amendment itself guarantees the taxpayer's insulation against liability imposed on the basis of a

> valid and timely claim of privilege, a protection broadened by 7203's statutory standard of "willfulness." Id. at 15. (Emphasis supplied).

Conviction is not proper even if claim of privilege is erroneous, if in good faith:

> "Because 7203 proscribes "willful" failures to make returns, a taxpayer is not at peril for every erroneous claim of privilege. The Government recognizes that a Defendant could not properly be convicted for an erroneous claim of privilege asserted in good faith. . . . . But the Court recognized that "good faith" in its assertion would entitle Murdock to acquittal. Id. at 15. (Emphasis supplied).

Similarly, those judges concurring:

> "Since a good-faith erroneous assertion of the privilege does not expose a taxpayer to criminal liability, ... The protection accorded a good-faith assertion of the privilege effectively preserves the taxpayer's freedom to choose between making incriminating disclosures and claiming his Fifth Amendment privilege. Id. at 1, 2. (Concur.) (Emphasis supplied).

A valid claim of privilege is a defense to a 7203 prosecution:

> It is constitutionally sufficient, according to the Court, that a valid claim of privilege is a defense to a 7203 prosecution. Id. at 2 (Concur.) (Emphasis supplied).

A good-faith assertion entitles the Defendant to acquittal!

> "Indeed, as the Court notes, ante, at 15, n. 18, the Court held that Murdock was entitled to acauittal if his assertion of the privilege was in good faith. Unit-

ed States v. Murdock (Murdock II), 290 U.S. 389 (1933). Id. at 2 (Concur.) (Emphasis supplied).

Additionally:

> "Only because a good-faith erroneous claim of privilege entitles a taxpayer to acquittal under 7203. . . Id. at 3 (Concur.) (Emphasis supplied)

A careful examination of the evidence, the Defendant's defense, and the record make clear the following points:

1. The Internal Revenue Service has made absolutely NO EFFORT TO COMPLY WITH THE SUPREME COURT'S DICTUM IN GARNER!

2. The Trial Court supported the Government to the extent that he refused to instruct the jury with respect to the Defense's Instructions! He misled the jury by giving them the wrong definition of "Wilfulness"! JUDGE RITTER HAS TOTALLY IGNORED THE SUPREME COURT'S DICTUM IN GARNER!

3. The Appellate Court has blindly (?) supported the Trial Court, disregarded the familiar reversible errors, and TOTALLY IGNORED THE SUPREME COURT'S DICTUM IN GARNER!

POINT II

THE TRIAL COURT HAS A MASSIVE PERSONAL PREJUDICE AND BIAS AGAINST THE DEFENDANT THAT PREVENTS HIM FROM MAKING OBJECTIVE, JUST DECISIONS.

The Defendant had previously signed a petition to have

Trial Court, Judge Willis W. Ritter, impeached, and he knew of this fact! The majority of the attorneys in this judicial district want Judge Ritter removed from office, but are fearful of allowing their names to be recorded, and therefore answer the Bar Association's Polls anonymously.

The Defendant has also openly supported legislation to have Judge Ritter stripped of his power a "Chief" Judge, and he also knew of this fact!

The Defendant had earlier filed a suit in Federal Court, to which Judge Ritter was a party, and he knew of this fact! He later heard and dismissed this suit, to which he was a party!

Judge Ritter has categorized the Defendant as a tax protestor, even though the Defendant neither was, nor is a member of any organization or group so involved. The Defendant is simply an individual citizen wishing to exercise his constitutionally protected rights LONG UPHELD BY THIS COURT!

The Defendant filed two motions for Disqualification. Both were summarily denied by Judge Ritter.

A Motion for a Writ of Mandamus was filed with the Tenth Circuit Court; However, Judge Ritter held the trial against the Defendant, immediately after denying the disqualification motions, and prior to receiving the ruling from the Circuit Court on the Mandamus.

Judge Ritter imposed the Absolute MAXIMUM PENALTY for these erroneous charges (i.e. Two years [consecutively] and twenty thousand dollars in fines!) The probation officer and the prosecuting attorney lied and grossly exaggerated values of income and home to insure the suppression

of ANY dissent, ANY opposition to corruption! This is a curious way to treat a citizen who is simply exercising his right to the Fifth Amendment privilege!

Judge Ritter ruled in a Motion to Reduce Sentence, the same supposedly having been withdrawn, the same entered by the attorney after having been fired! Remember the quote (on page 7 of this petition) reads a follows:

> THE COURT: Well, the motion is denied. It wouldn't make any difference if he had the whole bar representing him on that. I am not going to reduce that sentence." (T. 1,2).

This Honorable Court can see unmistakenly that there NO circumstances, no evidence sufficiently weighty to alter Judge Ritter's prejudiced mind to mitigate the harsh sentence! How can he objectively rule when he says such as quoted above? There should be no place for such subjectivity as Judge Ritter is demonstrating ON THE RECORD. His bias, which is repeatedly surfacing, is massive, and unyielding, and makes him unfit to rule in Defendant's case. HE IS USING THE POWERS OF THE COURT, UNDER COLOR OF LAW, TO SUPPRESS HIS PERSONAL ENEMIES AND CARRY OUT HIS VENDETTA!

POINT III

> DEFENDANT'S COUNSEL HAS, THROUGH INEPTITUDE, NEGLIGENCE, AND WANTON DISREGARD, MISREPRESENTED HIS CLIENT'S CASE.

Please refer to the Petition for Rehearing, submitted by the Defendant Pro se, for Affidavit, and extensive details substantiating the above charge. Also Appendix A-2.

Recourse is necessary to this Court by Certiorari for relief because the Tenth Circuit Court of Appeals has denied to petitioner his Federal rights.

CONCLUSION

Petitioner prays that the Petition for a Writ of Certiorari be granted. The Decision below is not in accord with applicable Decisions of this Court, Garner, Sullivan. Kastigar, Mallory and Monia.

Respectfully submitted,

THOMAS W. HOOPES
2559 Keddington Lane
Salt Lake City, Utah 84117
Petitioner Pro se

CERTIFICATE OF MAILING

A copy of the foregoing Petition was posted in the U. S. mail postage prepaid and addressed to the Assistant United States Attorney, Rodney G. Snow, Esq., 200 U.S. Post Office and Courthouse, Salt Lake City, Utah, 84101, on the 4th day of March, 1977.

Thomas W. Hoopes
Thomas W. Hoopes

APPENDIX A

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 76-1197

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. THOMAS WARNER HOOPES, Defendant-Appellant.	Appeal from the United States District Court for the District of Utah, Central Division (D.C. No. Cr-75-79)

Submitted on Briefs.

Ramon M. Child, United States Attorney, and Rodney G. Snow, Assistant United States Attorney, Salt Lake City, Utah, for Plaintiff-Appellee.

David J. Knowlton, Ogden, Utah for Defendant-Appellant.

Before PICKETT, HILL and McWILLIAMS, Circuit Judges.

PICKETT, Circuit Judge.

EXCERPT, Page 2, Paragraph 1:

"On appeal it is urged only that the trial court erred in refusing to instruct the jury on the theory of defense, which was that Hoopes had failed to file his 1971 and 1972 income tax returns relying in good faith upon the advice of attorneys. (Emphasis supplied)